

PHILLIPS DAYES

LAW FIRM

A Professional Corporation

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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Daniel Kesler;

Plaintiff,

vs.

Burger King Corporation, an Arizona
corporation.

Case No.: _____

COMPLAINT

Plaintiff Daniel Kesler, for his Complaint against Defendant, alleges as follows:

NATURE OF THE CASE

1. Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 215(a)(3), it is unlawful to discharge or in any other manner discriminate against any employee because such employee has filed a complaint or instituted or caused to be instituted any proceedings under or related to this chapter, or has testified or is about to testify in any such proceedings, or has served or is about to serve on an industry committee...”

2. Such conduct not only includes formal complaints with a court or the Department of Labor, but also informal complaints to an employer. *See Williamson v. Gen. Dynamics Corp.*, 208 F.3d 1144, 1151 (9th Cir. 2000).

1 3. Plaintiff brings this action against Defendant for retaliation in violation of
2 the FLSA.

3 4. Plaintiff has suffered emotional distress, mental anguish, lost past and
4 future wages as a result of Defendant's retaliatory conduct.

5 5. As a result of Defendant's retaliatory conduct, Plaintiff is entitled to
6 compensatory damages, punitive damages, attorneys' fees and costs, and all other legal or
7 equitable relief permitted under 29 U.S.C. § 216.
8

9 **JURISDICTION AND VENUE**

10 6. This Court has jurisdiction over the subject matter and the parties hereto
11 pursuant to 29 U.S.C. § 216(b), and 28 U.S.C. § 1331.

12 7. Venue is proper under 28 U.S.C. § 1391(b) because all of the events or
13 omissions giving rise to this matter occurred in this District.

14 8. The named Defendant, by virtue of their own acts and omissions or by virtue
15 of the acts and omissions committed by one or more of their agents, employees or
16 representatives, as described herein, have conducted business or caused events to occur
17 within the District of Arizona and, more particularly, within Maricopa County, Arizona,
18 as more particularly described herein so as to give rise to both subject matter and
19 personal jurisdiction of this Court.
20

21 **PARTIES**

22 9. At all times material hereto, Plaintiff was a resident of Maricopa County,
23 Arizona.

24 10. At all times material hereto, Burger King Corporation was incorporated in
25

1 the State of Arizona with its principal place of business in Maricopa County, Arizona.

2 **FACTUAL BACKGROUND**

3 11. At all relevant times, Plaintiff was an “employee” of Defendant.

4 12. The provisions set forth in 29 U.S.C. § 207 of the FLSA apply to Defendant.

5 13. At all relevant times, Defendant was and continues to be an “employer” as
6 defined in 29 U.S.C. § 203(d).

7 14. Defendant should be deemed an “employer” for purposes of the FLSA
8 including, without limitation, 29 U.S.C. § 216.

9 15. At all times material to this action, Defendant was and continues to be an
10 “enterprise engaged in commerce or in the production of goods for commerce” as defined
11 by 29 U.S.C. § 203(s)(1).
12

13 16. Plaintiff engaged in commerce or in the production of goods for commerce
14 and was therefore individually covered under the FLSA pursuant to 29 U.S.C. §§206(a),
15 207(a)(1), 212(c).

16 17. On information and belief, at all relevant times, the annual gross revenue of
17 Defendant exceeded, and continues to exceed, \$500,000.00.

18 18. Defendant is a fast-food restaurant.

19 19. Defendant hired Plaintiff as a Manager-in-Training.

20 20. On May 22, 2017, Plaintiff expressed his concerns with Defendant’s Human
21 Resources that employees in his restaurant were working off-the-clock to keep labor
22 hours low.
23
24
25

1 21. Plaintiff was fired shortly after expressing his concern about off-the-clock
2 work.

3 22. Plaintiff has retained the law firm of Phillips Dayes Law Firm PC to
4 prosecute his claims against Defendant on his behalf and has agreed to pay reasonable
5 costs and attorney's fees in the prosecution of this matter.

6
7 **COUNT ONE**
8 **RETALIATION IN VIOLATION OF THE FLSA**

9 23. Plaintiff incorporates and adopts the preceding paragraphs as if fully set
10 forth herein.

11 24. As set forth above, Plaintiff was retaliated against for exercising his rights
12 under the FLSA.

13 25. Pursuant to FLSA, 29 U.S.C. § 215(a)(3), it is unlawful to discharge or in
14 any other manner discriminate against any employee because such employee has filed a
15 complaint or instituted or caused to be instituted any proceedings under or related to this
16 chapter, or has testified or is about to testify in any such proceedings, or has served or is
17 about to serve on an industry committee..."

18 26. Such conduct not only includes formal complaints with a court or the
19 Department of Labor, but also informal complaints to an employer. *See Williamson v.*
20 *Gen. Dynamics Corp.*, 208 F.3d 1144, 1151 (9th Cir. 2000).

21 27. Plaintiff has suffered emotional distress, mental anguish, lost past and
22 future wages as a result of Defendant's retaliatory conduct.

1 28. As a result of Defendant's retaliatory conduct, Plaintiff is entitled to
2 compensatory damages, punitive damages, attorneys' fees and costs, and all other legal or
3 equitable relief permitted under 29 U.S.C. § 216.

4 WHEREFORE, Plaintiff respectfully requests that judgment be entered in his
5 favor, and against Defendant:

- 6 a. Awarding Plaintiff compensation in the amount due for unpaid
7 minimum wages in an amount to be proved at trial;
8 b. Awarding Plaintiff an additional amount equal to twice the underpaid
9 wages;
10 c. Awarding Plaintiff reasonable attorneys' fees, costs, and expenses of
11 litigation pursuant to A.R.S. § 23-364(G);
12 d. Awarding Plaintiff pre-judgment interest, at the highest legal rate, on all
13 amounts awarded under subsections (A) and (B) above from the date of
14 the payment due for that pay period until paid in full;
15 e. Awarding Plaintiff post-judgment interest, at the highest legal rate, on
16 all awards from the date of such award until paid in full; and
17 f. For such other and further relief as the Court deems just and proper.
18

19 Sated: August 8, 2018

20 Respectfully submitted,

21 **PHILLIPS DAYES LAW FIRM PC**

22 By: /s/ Sean C. Davis

23 Trey Dayes
24 Sean C. Davis
25 Preston Flood
 Attorneys for Plaintiff